

SOUTH AFRICA / JUDGMENT

S v Maduane (CC82/2019) [2021] ZAGPPHC 156 (15 March 2021)

[2021] ZAGPPHC 156

COURT

North Gauteng High Court, Pretoria

BEFORE

Bam

CASE / FILE NUMBER

CC82/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION PRETORIA

CASE

NO: CC82/2019

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHERS JUDGES: NO

(3)

REVISED

DATE:

15 March 2021

SIGNATURE:

In
the matter

between: THE
 STATE
 vs
 COLLINS
 LUCKY
 MADUANE
 Accused

JUDGMENT

Bam J:

1. The accused is standing trial on a charge of murder, allegedly committed on 3 March 1999. The deceased was Ms Florah Mahlo (initially the accused was also charged with theft of the cell phone of the deceased. This charge, objected to by defence counsel, however, fell away due to prescription
 - the crime was allegedly committed more than 20 years ago). The indictment was amended by the insertion of a reference to Section 51(1) of Act 107 of 1999.
2. The summary of substantive facts attached to the indictment reads as follows :
 - a) The accused and the deceased were in a love relationship at the time of her death.
 - b) On 3 March 1999 the accused and the deceased had an argument. Screams were heard by the tenants on the premises where the deceased and the accused cohabitated.
 - c) The following day the friends of the deceased enquired from the accused about the whereabouts of the deceased. He informed them that she went to Johannesburg to borrow money from her aunt. She was not seen again by either friends or family, after this day.
 - d) Shortly hereafter the accused informed a friend of the deceased that he was selling her cell phone.
 - e) On 23 June 2019 the accused confessed to the family and friends of the deceased that he killed the deceased.
 - f) He confessed that he killed the deceased, wrapped her body and deposited it at an open premises as well as a drain, where he set her body alight. Hereafter he chopped her body in two pieces. He buried one piece in a deserted premises and another he dumped into a drain. He pointed this out to the family.
 - g) The pieces of the body were never retrieved.
3. The accused pleaded not guilty, but advanced no plea explanation.
4. The following formal admissions were made by the accused.

1. That the Accused was in a relationship with Florah Mahle during the course of 1998 until 1999
2. That the residential address of Florah Mahle was situated at 5[...] Block "[...]", Soshanguve .
3. That on 13 August 2019 official photographs were taken by Capt. T W Beheydt at 5[...] Block "[...]", Soshanguve, as was indicated by Sergeant M J Chauke. The sketch plan, photo album and key thereto marked as ANNEXURE "A"
5. The State adduced the following evidence:

5.1 Ms T P Morena. In 1999 she attended Technicon North, Gauteng. She was 21 years of age. She rented a room at a house in Block [...], Soshanguve . Other students also rented rooms. The alleged deceased, "Florah", occupied a room next to hers. The accused lived with Florah. The last time she saw Florah was on 3 March 1999. That night she was awoken by screams coming from Florah's room. She heard two screams. It sounded that Florah was being assaulted. The second scream sounded as if Florah was being throttled. The next morning she saw the accused who volunteered the information that Florah had gone to Johannesburg to see her aunt. When she asked him about the screams he did not answer. She did not know whether the accused slept in that room thereafter . After a few days she noticed a very bad smell coming from the room of Florah.

The accused explained that the smell came from the fridge where Florah had switched off the power and meat had gone bad. Florah was a happy person and would always inform her if she was going somewhere, and was never gone for many days. Florah never returned.

Cross examination.

The accused denied that the witness's room was next to that of Florah. It was put that the accused would say that she made a mistake when she said she heard screams . This was denied by the witness . She conceded that it was not recorded in her witness statement that it sounded as if Florah was throttled. It was also pointed out that she did not say anything about a rotten smell in her statement. It was then recorded that the accused would say that the smell in the corridor was caused by food on a hot plate left by the deceased . It was further recorded that the accused did not sleep in that room every night. This was denied. She said she did not call the police because she heard only two screams. Upon requested by the Court she drafted a sketch of the outlay of the rooms occupied by her and others of the residence where they lived, "Exhibit AA".

5.2 Ms Cathrine Debeila. She also lived in a room in the said residence. She knew the accused and Florah. They had a love relationship and occupied a room across the passage from her room. The night of 3 March 1999 she heard three loud screams coming from Florah's room. She did nothing about it because she thought they were fighting like other people. The next day she asked the accused about the whereabouts of Florah. The accused told her that Florah had gone to her aunt in Johannesburg . When she asked him about the screams , he did not answer. She and the accused then decided to hold a braai. Before they went to the butchery they were in Florah's room. The room was "mixed up" (disorderly). The sheet and blanket was not on the bed and there

was a heap of washing in one corner. She found the situation strange because Florah was a very orderly person. It seemed that the people had a fight. About three days later a smell started developing in the corridor coming from Florah's room. The accused would come and sleep in that room every night. It seemed that he was under the influence of alcohol. She asked the accused about the smell and he said he had half of a sheep's head in the room which had gone bad. The fan in the room was always on. Of character, Florah was a happy person.

It was recorded that the accused would say that he did not remember this witness . She conceded that she did nothing upon hearing the screams, but added that it was in the early hours of the morning. It was recorded that the accused would deny that there were screams, and that he did not say that Florah went to Johannesburg . In respect of the smell the accused's version was that it was caused by food left on a hot plate by Florah. She repeated that the accused mentioned the half head of a sheep. The accused's version is that he told her that Florah went to her mother to collect money. She said she did not know what happened to Florah.

Upon questions by the court she confirmed that her room is depicted on the sketch, Exhibit AA , marked Catherine.

5.3 Ms TPH Baloyi. She was also a student and lived several houses from where Florah rented a room. They were good friends . Florah would visit her at her shop when she passes by to school, and she visited Florah at her room. She knew the accused very well. She called Florah on her cell phone for three days after her disappearance , but could not reach her. The accused then visited her. He was in possession of Florah's Nokia cell phone and asked her to enter the PIN number. She did not have it. She asked him where Florah was and he responded that she went to a relative. This she found very strange because Florah always told her where she was going.

It was recorded that the accused did not recognise her at all, even after the Court had requested her to remove her mask. It was recorded that the accused would deny that he visited her and that he was in possession of Florah's cell phone. She repeated that she knew the cell phone well. She conceded that she did not tell the police shortly after Florah's disappearance that the accused was in possession of the cell phone, but that she only said that in a statement she made 8 months later.

5.4 Trial within a trial.

5.4.1 Adv Ngobeni informed the Court that the state intended to adduce evidence that the accused had made admissions and confessions in the presence of several people. The people included the sister of the accused, Cynthia Msiza a friend of the accused and Florah, called Nancy, who is a sergeant in the SAPD, but who was present as a friend of the accused, and after being summoned by the accused, as well as the mother of Florah.

5.4.2 Defence Counsel contested the admissibility of the alleged confessions made by the accused on the following grounds:

- 1.

The statements made by the accused were not made voluntarily;

2.

The accused was enticed to make the statements ;

3.

The accused was assaulted by a woman, which led to the police being called;

4. The accused was not in his sound and sober senses, in that he was intoxicated, under the influence of alcohol;

5. The statements were made to a police officer, a sergeant at the time;

6. That the accused was mainly influenced by the witnesses to make statements.

The court ordered that a trial within a trial should be held:

5.4.3 Ms Cynthia Msiza

Ms Msiza is the sister of the accused. He is her elder brother. They have several other siblings. Her relationship with the accused was very close. Since the year 2000 the accused told her on several occasions that he had killed Florah. At the time he was in jail for other cases. He told her he could not sleep because Florah's spirit was bothering him. He told her she was the woman he stayed with at the time. When she asked him why he did not plead guilty to that crime, he said he killed her but that there was no evidence. He gave her a short version of what he had done: He said he throttled her and rolled her body in a mat, that he bought 5 litre petrol, that he took the body to an open field where he burned it. At the time he told her what happened he was in jail and in his sober mind. She happened to visit him every week whilst he was in jail and he told her on two occasions what he did. She never influenced him and he volunteered the information, indicating that he was suffering . She then told her parents what the accused had told her, but her mother said he was lying. In 2019 , the accused was at their home. Her daughter told her that she had a problem with the accused. When she confronted the accused he told her he was going to kill her child and that he was going to get hold of a firearm. The accused was sober but angry. She reported this to the police at Soshanguve, but they had no vehicle available to assist her. She knew the accused well and knew he would carry out his threats to kill them. When she got out of the police station she found the accused waiting. They returned home and she wanted to calm him down. She then called one of their friends, Nancy, to assist. At the time Nancy was a police officer. On that day Nancy was not on duty and attended as a friend and not in her capacity as a police officer. The accused was very happy to see Nancy and got into her vehicle. The accused said Nancy is his friend and that he did not want a Nancy who is a police officer because what he was about to say will send him to jail. The accused then called on her to accompany them. He asked whether they had money on them and told them to switch off their cell phones. She switched her phone on again and transferred R50.00 to his account, which he withdrew from

FNB. He wanted to buy liquor. The accused then asked them to drive to where he and Flora resided. In the mean time she managed to keep her phone and recorded everything said.

When Adv Ngobeni indicated that she intended to adduce the transcribed recorded cell phone evidence, Adv Fisher-Klein objected.

The objection was overruled in view thereof that Ms Ngobeni earlier contended that everything the accused said to the witnesses would be relevant to the question whether the accused voluntarily made the confession .

The recorded confessions were admitted in evidence for the purposes of the trial within a trial. (Exhibit "N")

Ms Msiza stated that reason for recording the conversation was to convince her parents about what the accused initially told her about having killed Florah. She recorded the conversations with the accused on both 23 and 24 June 2019. The record consists of about 100 pages, but there is no need to refer in minute detail to what was recorded.

The recorded evidence showed that the accused , in detail, described that he had killed Florah by strangling her, and that he, after several days, disposed of the body by chopping it in portions, burning it and discarding the remains at different locations.

It was repeated by Ms Msiza that the accused freely and voluntarily told her and Nancy what he did, and that he even pointed out several relevant locations, including the room where they lived, and he killed Florah, and where he disposed of the body parts. No remains were found .

The accused told them that he wanted to tell them what happened because he could not sleep and was haunted by Florah's spirit, which kept on appearing to him, and even having sexual intercourse with him.

After having informed Cynthia and Nancy about what happened he insisted that Florah's mother should also be called so that he could tell her as well.

The next day, Monday, Florah's mother arrived. She found the accused , Nancy and Florah's mother in Nancy's car. The accused again insisted that they should switch off their cell phones, because, he said, he did not want police when testifying to Florah's mother, because what he was going to say will put him in jail. They then took their cell phones to another vehicle, but when the accused went to relieve himself, she retrieved her cell phone. She then again recorded everything that was said. There was then a repetition of what transpired and what was said the previous day. At a stage the accused said only God and Satan knew what he did. A few days later she took the information she had to the police at Soshanguve . There Colonel Lesibo listened to the recording.

Cross examination

1

The accused would deny that he made any confession to the witness. In respect of what happened on 23 June 2019, the accused would say that he was hit by Ms Msiza's daughter , Mpho, with a steel telephone table over the head, and that he sustained an open injury, which was bleeding. The witness responded that she knew nothing about that and denied that the accused had a bleeding wound when he was in her presence. The accused's

reasons

why he made the confession and paintings out were recorded: He was asked a lot of questions; He was smooth talked into making the confession. (In respect of the latter reason recorded on behalf of the accused, despite several invitations by the Court, Adv Fisher-Klein evaded the issue and declined to record exactly what "smooth talk ' involved.) It was further put to the witness that she had tampered with the recording. Upon enquiries by the Court to elaborate on the tampering, it transpired that what was meant is that, apparently , the first part of the recordings was not before the court.

5.4.4 Ms A Mahlo. She is the mother of Florah who disappeared on 3 March 1999. About 14 days later she learned of Florah's disappearance from Nancy, a friend of Florah. At Soshanguve, at Nancy's place, she was introduced to the accused by Nancy. The accused gave her the key to Florah's room, but said he did not know where Florah was. When she told him that he could not say that, he responded that he was not in court and would not answer many questions . The accused then went with them to Florah's room. There he told her that Florah went to Johannesburg to fetch money from her aunt, on mother's side. She phoned her sister who denied that Florah had visited her. Florah's room was in disarray . Even the pillows were on the floor. The accused left with a black bag, and said it contained his belongings. The next morning when she again visited Florah's room, she discovered that the duvet was missing. Only the matching pillow cases were left. She found it difficult to believe that Florah would have left for anywhere without calling her. In the year 2007 the accused called her over. She was then living in Polokwane. The accused asked her whether she was suspicious that he made Florah disappear . That she confirmed. The accused then amongst others asked her for forgiveness . When she asked him why, he said he did not have a life. The accused then received a phone call and she heard the person who called asking the accused whether she had arrived. The accused confirmed and she heard the person who called telling the accused not to say anything. The accused then dropped the call and said he was leaving. When she asked him whether that was why he called her to come from Polokwane, the accused confirmed it and left. She again saw the accused on 24 June 2019. She, and two cousins, arrived at a place called Transfer. There she met Nancy, who phoned the accused. They found the accused at another house, where they waited for Cynthia. The accused was sober and did not smell of alcohol. When Cynthia arrived the accused said what he was about to say no policeman should know about. The accused knew very well that Nancy was a police woman. The accused did not want to talk in the presence of her two cousins. The accused told them to switch off their cell phones and to put it in the Nissan vehicle she and her cousins had arrived in. Whist in the vehicle the accused asked for forgiveness and said that Florah was not in this world anymore because he had killed her. The accused then described that

he had killed Florah by strangling her, and that he later cut her body into two pieces. The accused was then addressed by Cynthia who asked him where he buried Florah's body parts. The accused said he had dumped the bottom part of Florah's body in a drain, and the top part he buried where she rented the room. The accused pointed out the two places. She did not know that Cynthia was recording everything.

The cell phone she bought for Florah was an Ericson. In 2007 she was phoned by the accused , and 2019 she was phoned by Nancy with the accused present. On 24 June 2019 they picked up the accused from a neighbour's house because he did not want people to see that he was picked up at his mother's house. She denied that the accused was holding a beer bottle when he emerged from the house. She did not observe that the accused had an injury on his head. She denied that Nancy had bought the accused two Savannahs. She denied that the accused was under the influence of alcohol.

5.4.5 Warrant Officer Nancy Makua. At the time of Florah's disappearance in 1999, she was a sergeant in the Police Force, stationed at Shoshanguve. She was a friend of Florah and the accused . During the evening of 3 March 1999, she visited Florah. Everything was in order. A few days after Florah's disappearance the situation was reported to her. On 5 March 1999 she asked the accused about Florah, and he told her that Florah went to Johannesburg to collect money from her aunt. The accused said Florah left in a hurry. Florah never returned. She found Farah's disappearance strange because she knew Florah well, and Florah used to tell her whenever she went somewhere. Florah's mother collected the key of the room from the accused. In 2007 she was informed by Cynthia that the accused intended to convey something to Florah's mother. However, when Florah's mother visited them the accused asked her for forgiveness , but told her he had nothing to do with Florah's disappearance. On 23 June 2019 she was on leave. She was then called by the accused's sister , Cynthia, who told her that the accused was fighting and that she should come to their home. At the house she was met by the accused, who smiled and hugged her as a friend. Cynthia also exited the house. They drove off and when she asked the accused what was wrong, he said he was stressed, and told them to switch off their cell phones because he wanted to talk. The accused then said he had killed Florah. The accused was not under the influence of liquor. The accused said he did not want the police involved. He spoke to her as a friend and that he trusted her. The accused said he was stressed because Florah's spirit was following him. The accused took them to where a drain was and to the house where Florah had rented a room. These were the places where the accused said he had disposed of Florah's body parts. At the house where Florah rented the room, the landlady chased them out. She denied that she bought the accused any liquor. On 24 June 2019 Florah's mother arrived at Transfer. They then went to pick up the accused. She denied that the accused drank any liquor in her presence. He was not drunk. Cynthia was also present. The accused again said they should put off their cell phones. She was not aware that Cynthia was recording the conversation.

She repeated that the accused was excited when he saw her and denied that he was angry. The accused spoke about Florah immediately when they drove off. When asked why she did not arrest the accused immediately when he confessed to Florah's murder, she said that was for the

investigating officer to do. She did not know that Cynthia was recording the conversation . When Cynthia told her about it 3 days later she approached Lt Col Sebande with the information. Nancy denied the accusation that she and Cynthia worked together to obtain this evidence . She conceded that Collins called her his girlfriend and added that he once even proposed love to her. It was then recorded that the accused would say he made all the remarks to her because he was drunk. This was also denied. She did not know about the accused's problems with Mpho, and said Cynthia called her because the accused was fighting. She denied that the accused had an injury. She denied that she bought the accused liquor. It was recorded that everything the accused said was not voluntarily because he was drunk . It was denied.

5.4.6 Ms Elizabeth Magagula. She is the landlady of the premises rented by Florah in

1999. She did not know the accused. On 23 June the accused and two women arrived at her premises. The accused wanted access to Florah's room. She was suspicious about the circumstances and refused him entry. The accused was not under the influence of liquor, although this appears in her witness statement.

6 Defence evidence: Trial within trial

6.1 The accused. Collins Lucky Maduane. His evidence can be summarised as follows. In the year 2000 he was serving a sentence in another matter. Cynthia visited him in 2001, 2002 and 2003, on several occasions . He kept a notebook . When he was released from prison, Cynthia did not welcome him with open arms. On 23 June 2019 he was assaulted by Mpho, Cynthia's daughter. He was drunk at the time. After the assault, he intended to lay a charge against Mpho at the Shoshanguve Police Station. There he was persuaded by Cynthia not to do it. He conceded that he talked to Cynthia, Nancy, and Florah's mother on 23 and 24 June 2019 . The conversation with Cynthia and Nancy was about the family problem with Mpho. He remembered that they drove around and even visited the residence where he and Florah resided in 1999. He does not know why Cynthia called in Florah's mother on the 24th. He was drunk on both days and cannot recall what they talked about except the family problem. He could not remember any detail of the conversation as recorded by Cynthia.

Cross examination.

He intended to lay a charge against Mpho for the assault, although he was drunk . At that stage he had bathed already and donned clean clothes. He denied that he initiated Florah's killing as it is reflected in the recording transcript. He said that everything was done by Cynthia, and that she lied about what he said. When asked whether Florah haunted him, he responded: "/ know nothing the people who brought it will know". He denied that Nancy was his friend. It was pointed out to the accused that several witnesses said Nancy was his friend , and that it was never disputed . He said Nancy also lied in that regard. He did not know how it came about that Cynthia and Nancy started mentioning Florah 19 years after her death. On 23 and 24 June he expected that the talking would be about his problems with Mpho. He repeated that on the 23rd he drank about 3 quarts of Black Label.

6.2 Ms Lydia Maduane. She is the mother of the accused and Cynthia. When the accused was in jail in the beginning of 2000, she visited him every Saturday . In 2019 the accused was staying with her. On 23 June the accused was assaulted by Mpho. She did not see exactly what happened but the accused was thereafter bleeding from a head wound . The accused was drunk. Her relationship with Cynthia deteriorated .

She did not know that the accused was on his way to lay a charge against Mpho. She repeated that the accused was drunk.

End of trial within a trial

7. The evidence about the confession was provisionally admitted. It was recorded that the reasons for admitting the confessions will follow later.
8. The State closed its case.
9. The Accused closed his case.

EVALUATION

10. The State bears the onus to prove its case beyond reasonable doubt. There is no onus on the accused.
11. The State adduced circumstantial evidence on the merits, proving that on 3 March 1999, Ms Florah Mahlo, the alleged deceased , disappeared from the rented room where she and the accused lived, to never return. Further evidence included confessions made by the accused to his sister Cynthia, and a friend, Nancy, which was secretly recorded by Cynthia on her cell phone.
12. The admissibility of the confession was contested by the accused . After the confession was provisionally admitted in evidence, the State closed its case and the accused followed suite, and closed his case.
13. It was clear that the confession was made freely and voluntarily . The issue about Nancy being a police officer at the time will be addressed later. The confession became finally admitted.
14. In respect of the merits, the State also relied on the relevant evidence adduced during the trial within a trial.
15. In respect of the merits, before turning to the evidential value of the confession, in considering the circumstantial evidence, the following: The State adduced evidence that Florah Mahlo had disappeared on 3 March 1999. At the time Florah, a Technicon student, and the accused were involved in a relationship and living together. The night of 3 March 1999, tenants of other rented rooms in the house, friends of Florah, heard several screams coming from Florah's room. The rooms of the said other tenants were either adjoining or in the immediate vicinity of Florah's room. The next morning Florah was missing. Upon enquiries directed to the accused he said that Florah had gone to Johannesburg to get

money. One version of the accused was that Florah went to her mother and the other that she went to her aunt. It is common cause that Florah had disappeared on 3 March 1999 and never returned. Florah's friends, and mother, found it very strange that Florah had gone somewhere without informing anyone about it. Florah never left for any period without telling her friends, and her mother. Subsequent to Florah's disappearance, it was found that her room was in disarray. About three days later the other tenants of the house noticed a terrible smell coming from Florah's room. The accused, when asked about the smell, had different explanations; one being that the smell came from rotten meat in a fridge of which the electric power had been switched off, another was that Florah had forgotten food on a hot plate in the room. A few days later, the accused attempted to sell Florah's cell phone to a friend of Florah. The only inference to be drawn is that Florah was probably killed the night of 3 March 1999.

16. Although the evidence of Florah's screaming and the accused's controversial explanations were challenged during cross examination, the accused did not testify, and that evidence was not rebutted. Taking into account all the circumstances, Florah disappeared under highly suspicious circumstances, and the accused was the last person to see her alive.
17. If the State would have relied only on that evidence, before finding that it constitutes proof that Florah was murdered by the accused, it has to be found that that is the only reasonable inference to be drawn from the circumstances. Adv Fisher-Klein, appearing for the accused, was unable to submit that any other reasonable explanation could be drawn from the circumstances. Adv Ngobeni emphasised that there was no other inference to be drawn.
18. I am satisfied that the aforesaid circumstantial evidence proves beyond reasonable doubt that the accused murdered Florah that night of 3 March 1999. However, that is not where the accused's woes ended. The State adduced the evidence of a confession the accused made to his sister, Cynthia, in the beginning of 2000, and on 23 and 24 June 2019 to Cynthia and his friend, Nancy, as well as to Florah's mother. The admissibility of the confessions (excluding the confession the accused made to Cynthia in the beginning of 2000, which was but denied by the accused) was contested on several grounds, namely: That the accused was assaulted by another woman; that he was under the influence of liquor at the time; that he was subjected to severe questioning; that he was smooth talked into confessing; and that the confession was made to a police officer (Sergeant Nancy Makua), with no compliance with the provisions of Section 217 of the Criminal Procedure Act. It was further raised that the accused's constitutional rights were also violated in that his rights were never explained to him by Nancy Makua.
19. The first confession that he had killed Florah, the accused made to Cynthia in the beginning of 2000, whilst he was in prison. Subsequently, on 23 and 24 June 2019, the accused repeated the confession that he had killed Florah, to Cynthia, which was secretly recorded by Cynthia on her cell phone. At that stage Nancy Makua, a police officer, was present. The Court allowed the State to adduce evidence of the recorded confession on the basis that the contents thereof was intrinsically linked to the issue whether the accused made the

confession freely and voluntarily .

20. The accused testified and contested the admissibility of the confession, mainly on the basis that at the time he was under the impression that the conversation was about the family problem, and that he was under the influence of liquor and could not recall what he said at the time.
21. It is of importance to take into account that according to the State witnesses and the recorded confession what prompted the accused to confess, was apparently his conscience in being troubled at night by the haunting spirit of Florah. The evidence of Cynthia and Nancy, in that regard, confirmed by the recorded conversations , is clear, and has to be accepted. The accused called on Cynthia, Nancy, and Florah's mother to listen to him baring his soul in an attempt to set his mind at rest. The accused's version that he was drunk and could not recall any detail of the conversation, is not reasonable possible true, and had to be rejected.
22. Nancy was present during the recorded conversation in her capacity as a friend of the accused. This is also borne out by the accused's specific remark, in addressing Cynthia and Nancy, that he did not want (other) police involved. Accordingly, the fact that Nancy, at all relevant times, remained a police officer, caused no prejudice to the accused. The accused included Nancy in whatever he was talking about.
23. It also has to be kept in mind that the confession the accused made on 23 and 24 June 2019 was mainly addressed to Cynthia, who, purposefully, in order to convince her parents of the accused's confession, recorded it secretly on her cell phone. Neither Nancy, nor anybody else was aware of the recording. If the confession was indeed addressed to Nancy, one could have expected her to either record it herself or make notes about it. Only after being made aware that Cynthia had recorded the conversation, did Nancy inform her superior officer. It is remarkable that Nancy made her witness statement, implicating the accused, only after the accused's arrest.
24. In respect of Nancy being present when the accused made the confession, the classic case of *R v Blyth* 1940 AD 355, concerning similar circumstance, is comparable. In that matter a confession addressed to a police officer was intercepted and read by a police constable. The confession was nevertheless admitted in evidence because it was intended to be read by the officer.
25. It follows that the defence's contention that the confession should be disallowed because it was made to Nancy, had to be rejected.
26. The State's case in respect of the circumstantial evidence was therefore materially corroborated by the said confess ions to Cynthia in the early 2000's, as well as the recorded confession on 23 and 24 June 2019.

The accused is convicted of murder as charged.

A J BAM

JUDGE OF THE HIGH COURT

DATE OF HEARING:

:22 FEBRUARY TO 03 MARCH 2021

DATE OF SENTENCE

:03 MARCH 2021

DATE OF WRITTEN REASONS FOR

JUDGMENT

:15 MARCH 2021

APPEARANCES:

For The State: Advocate SD Ngobeni For The Accused Advocate SF Fisher-Klein

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